



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[FMCSA-2013-0470]

Hours of Service of Drivers: American Trucking Associations (ATA); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the ATA for an exemption from the 14-hour provision of the Agency's hours-of-service regulations to enable certain drivers to exclude waiting time at a natural gas or oil well site from their calculations of on-duty time. Currently, only specially trained drivers of commercial motor vehicles (CMVs) that are specially constructed to service oil and natural gas extraction sites may employ this provision. ATA proposes that FMCSA by a limited 2-year exemption that may be renewed, permit exclusion of such waiting time by drivers of CMVs who are exclusively engaged in servicing oil and natural gas extraction sites and have the opportunity to obtain rest while waiting at such sites. FMCSA requests public comment on ATA's application for exemption.

DATES: Comments must be received on or before [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2013-0470 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number.

For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov, and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you

want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR part 350 et seq.). FMCSA must publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)]. The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also

specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed [49 CFR 381.300(b)].

ATA Application for an Exemption

Part 395 of the FMCSRs contains the hours of service (HOS) rules for drivers of CMVs in interstate commerce. Section 395.8 of the FMCSRs requires most interstate CMV drivers to maintain a handwritten or electronic record of duty status, or log, on a 24-hour grid. They must record their duty status as either “off duty,” “sleeper berth,” “on duty/not driving” or “on duty/driving.” Drivers must keep their log up to date to the most recent change of duty status, and have their log for the current date and the preceding 7 days on board the CMV.

Generally, a driver may not record time as “off duty” unless he or she has been relieved of all duty and responsibility for the care and custody of the CMV, its accessories, and its cargo, and is free to pursue activities of his or her own choosing. Thus, drivers who are waiting, whether at a loading dock or at a natural gas or oil well site, are generally considered to be “on duty.” Section 395.3(a)(2) of the FMCSRs provides that “a driver may drive only during a period of 14 consecutive hours after coming on duty following 10 consecutive hours off duty.” However, the FMCSRs provide a special exception to the 14-hour rule for the waiting time of a specific classification of driver. Section 395.1(d)(2) provides, “In the case of specially trained drivers of commercial motor vehicles that are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site” (waiting-time rule). These drivers may record such waiting time as off duty time, making note of the waiting-time rule on their log. Section 395.1(d)(2) also provides that the waiting time of these drivers “shall not be included in calculating the 14-hour period”

ATA asks that FMCSA, by a limited 2-year exemption that may be renewed, permit similar treatment of waiting time at such locations to drivers “exclusively engaged in servicing oil and natural gas extraction sites” who are able to establish “a method to adequately ensure a rest opportunity while waiting.” ATA suggests that “trucks equipped with sleeper berths” and “on-site bunking or resting facilities” would satisfy the “rest opportunity” standard. ATA believes the proposed exemption would encourage these drivers to obtain quality rest at extraction sites and would provide an improved standard for State officials enforcing waiting time requirements.

FMCSA can only grant an exemption if an FMCSR prevents a motor carrier from “implementing more efficient or effective operations that would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption” [381.305(a)]. ATA asserts that its proposed exemption would maintain or exceed the level of safety of the current waiting-time rule.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on ATA’s application for an exemption from section 395.1(d)(2) (the waiting-time rule) of the FMCSRs. The Agency will consider all comments received by close of business on [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: May 16, 2014

Larry W. Minor
Associate Administrator for Policy

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